

ANALYSIS OF AMENDED BILL

Author: Ackerman Analyst: Paul Brainin Bill Number: AB 1694
Related Bills: _____ Telephone: 845-3380 Amended Date: 03-19-98
Attorney: Doug Bramhall Sponsor: Franchise Tax Board

SUBJECT: Partnerships and Limited Liability Companies Return Due Date

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED January 26, 1998, STILL APPLIES.

☒ OTHER - See comments below.

SUMMARY OF BILL

This bill would amend the Revenue and Taxation Code (R&TC) to establish the due date of the returns for partnerships and limited liability companies (LLCs) as on or before the 15th day of the fourth month following the close of their taxable or income year.

This bill also makes technical changes to clarify that the department may suspend the powers of certain LLCs which fail to pay tax and to reflect the correct cite for the tax and fees on LLCs classified as partnerships by the Personal Income Tax Law (PITL).

SUMMARY OF AMENDMENT

The March 19, 1998, amendment adds the technical changes discussed in this analysis.

The department's analysis of the bill as introduced January 26, 1998, still applies to the provision on due dates.

DEPARTMENTS THAT MAY BE AFFECTED:

___ STATE MANDATE

___ GOVERNOR'S APPOINTMENT

Board Position: <input checked="" type="checkbox"/> X <input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR <input type="checkbox"/> PENDING		Agency Secretary Position: <input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR <input type="checkbox"/> DEFER TO _____		GOVERNOR'S OFFICE USE Position Approved _____ Position Disapproved _____ Position Noted _____ By: _____ Date: _____	
Department/Legislative Director Gerald H. Goldberg		Date 4/6/98		Agency Secretary Date	

EFFECTIVE DATE

This provision would apply to taxable or income years beginning on or after January 1, 1999.

SPECIFIC FINDINGS

Prior to 1996, the taxes and fees on LLCs and other entities classified as partnerships were assessed **under the Bank and Corporation Tax Law (B&CTL)**. However, SB 715 (Ch. 952, Stats. 1996) moved the language imposing taxes and fees on partnerships and LLCs not classified as corporations to the PITL. The B&CTL language remains in the statutes for reference purpose, but was rendered inoperative for taxable years beginning on or after January 1, 1997.

LLCs classified as corporations are subject to the applicable corporate franchise and income taxes, including the corporate requirement to prepay the minimum tax to the Secretary of State. LLCs not classified as corporations are subject to the PITL annual LLC tax of \$800 and to an annual fee based on total income reportable to California.

Under current B&CTL, the Franchise Tax Board may suspend the powers of any corporation that files a return, but fails to pay its tax; or that receives a notice and demand from the FTB for tax, penalty, or interest due, and fails to pay the required amounts. If suspended, the corporation is not entitled to retain its own name, does not have the right to defend itself in court, and does not have the right to file a protest or appeal with the FTB or BOE with respect to matters causing the suspension.

State law, as enacted in SB 469 (Stats. 1994, Ch. 1200), provided that LLCs not classified as a corporation for California tax purposes also are subject to suspension of their powers if they fail to pay tax, penalties or interest due.

This bill would correct a technical oversight in SB 715 (Stats. 1996, Ch. 952) and ensure that the department continues to have the ability to suspend the powers of an LLC not classified as a corporation for California tax purposes that fails to pay its tax.

This bill would add to the law regarding filing requirements of LLCs classified as partnerships a reference to the chapter of the PITL that governs the tax and fees on LLCs classified as partnerships pursuant to SB 715 (Stats. 1996, Ch. 952).

Implementation Considerations

Implementation of this bill would not significantly impact the department.

FISCAL IMPACT

Departmental Costs

This bill would not significantly impact the department's costs.

BOARD POSITION

Support.

The Franchise Tax Board voted to sponsor this language in its meeting on November 17, 1997.